

# CUSTOM AND ADOPTED LAWS

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# Custom and Adopted Laws Act 1971

## TABLE OF PROVISIONS

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### **SCHEDULE 1**

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SCHEDULE 3 [*Repealed*]

SCHEDULE 4 [*Repealed*]



# Custom and Adopted Laws Act 1971

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## TABLE OF AMENDMENTS

The Custom and Adopted Laws Act 1971 No 11 was certified on 5 January 1972 and commenced on 21 February 1972 (GN No 37/1972; Gaz 6/1972).

| <b>Amending Legislation</b>                               | <b>Certified</b> | <b>Date of Commencement</b>   |
|---|------------------|-------------------------------|
| Custom and Adopted Laws (Amendment) Act 1972 No 15        | 18 August 1972   | 18 August 1972                |
| Custom and Adopted Laws (Amendment) Act 1976 No 22        | 10 November 1976 | 10 November 1976              |
| Custom and Adopted Laws (Amendment) (No 2) Act 1976 No 23 | 10 November 1976 | 10 November 1976              |
| Statute Law Revision Act 2011 No 8                        | 15 April 2011    | Sch 1[51]–[53]: 15 April 2011 |
| Interpretation (Consequential Amendments) Act 2011 No 18  | 3 November 2011  | Sch[7]: 3 November 2011       |
| Revised Written Laws Act 2021 No 7                        | 1 June 2021      | 1 June 2021                   |



An Act to make better provision relating to the institutions, customs and usages of the Nauruans and to adopted laws.

Enacted by the Parliament of Nauru as follows:

## **1 Short title and commencement**

This Act may be cited as the *Custom and Adopted Laws Act 1971* and came into effect on 21 February 1972.

## **2 Interpretation**

In this Act:

‘*court*’ means any court which may from time to time have jurisdiction within the Republic and any other court which may from time to time have jurisdiction to entertain an appeal from a judgment, order or decision of any court having jurisdiction within the Republic.

## **3 Nauruan institutions, customs and usages**

(1) The institutions, customs and usages of the Nauruans to the extent that they existed immediately before the commencement of this Act shall, save in so far as they may hereby or hereafter from time to time be expressly, or by necessary implication, abolished, altered or limited by any law enacted by Parliament, be accorded recognition by every court and have full force and effect of law to regulate the following matters:

- (a) title to, and interests in, land, other than any title or interest granted by lease or other instrument or by any Nauru written law;
- (b) rights and powers of Nauruans to dispose of their property, real and personal, *inter vivos* and by will or any other form of testamentary disposition;
- (c) succession to the estates of Nauruans who die intestate; and
- (d) any matters affecting Nauruans only.

[subs (1) am Act 18 of 2011 s 3 and Sch[7], opn 3 Nov 2011]

(2) Any custom or usage by which:

- (a) a person is or may be entitled or empowered to take or deal with the property of any other person without that person’s consent; or
  - (b) a person is or may be entitled or empowered to deprive the parents of a child of its custody and control without their consent,
- is hereby abolished.

## **4 English laws adopted**

(1) Subject to the provisions of subsection (4) and of Sections 3, 5 and 6, the common law and the statutes of general application, including all rules, regulations and orders of general application made thereunder, which were in force in England on the 31st day of January, 1968, are hereby adopted as laws of the Republic.

[subs (1) am Act 23 of 1976 s 3, opn 10 Nov 1976]

(2) Subject to subsection (4), the principles and rules of equity which were in

force in England on the 31st day of January, 1968, are hereby adopted as the principles and rules of equity in the Republic.

[subs (2) am Act 23 of 1976 s 3, opn 10 Nov 1976]

- (3) In every civil cause or matter instituted in any court of law and equity shall be administered concurrently but, where there was before the commencement of this Act or is any conflict or variance between the rules of equity and the rules of the common law relating to the same matter, then the rules of equity shall prevail.

[subs (3) am Act 15 of 1972 s 3, opn 18 Aug 1972]

- (4) The principles and rules of the common law and equity adopted by this Section may from time to time in their application to the Republic be altered and adapted by the courts to take account of the circumstances of the Republic, and of any changes of those circumstances, and of any alterations or adaptations of those principles and rules which may have taken place in England after the 31st day of January, 1968, whether before or after the commencement of this Act, but:

- (a) nothing in this subsection shall be taken as requiring that any principle or rule of the common law or equity adopted by this Section be altered or adapted in its application to the Republic; and
- (b) a principle or rule of the common law or equity adopted by this Section shall not be altered or adapted in its application to the Republic unless the court which makes the alteration or adaptation is satisfied that the principle or rule so altered or adapted will suit better the circumstances of the Republic than does the principle or rule without that alteration or adaptation.

[subs (4) insrt Act 23 of 1976 s 3, opn 10 Nov 1976]

## 5 Adoption subject to Nauru jurisdiction and statutes

- (1) The common law, statutes, rules, regulations and orders adopted by Section 4 shall have force and effect within the Republic only so far as the circumstances of the Republic and the limits of its jurisdiction permit and only so far as they are not repugnant to or inconsistent with the provisions of this Act or of any Ordinance or Act in force at the commencement of this Act or from time to time with any law enacted hereafter by Parliament or with any Act, statute, Ordinance, law, rule or regulation of the Commonwealth of Australia, the State of Queensland, the Territory of Papua or the Territory of New Guinea for the time being expressly applied in, or adopted as the law of, the Republic by any Act or Ordinance.
- (2) All references to authorities, persons, places, subjects, matters or things in any part of the laws of England adopted by this Act shall be construed as referring to corresponding or analogous persons, places, subjects, matters or things within the Republic.
- (3) For the purpose of facilitating the application of any part of the laws of England adopted by this Act it shall be lawful for any court, and any Justice of Appeal, Judge or magistrate, to construe it with such verbal alteration not affecting the substance as may be necessary to render it applicable to the matter before such court, Justice of Appeal, Judge or magistrate.

[Article 57A of the Constitution vests power to the District Court, Supreme Court and Nauru Court of Appeal. Amended by Constitution (Amendment) Act 2018, Act 12 of 2018.]



## **6 Certain English laws not adopted**

Despite Section 4, the parts of the statute law of England specified in Schedule 1, all rules, regulations and orders made under that statute law and the parts of the common law relating to that statute law do not, except as specified in Schedule 1, apply or have force and effect within the Republic except in so far as all or any of them are adopted or applied from time to time by another Act, provided:

- (a) that the provisions contained in any such parts shall be deemed to have been adopted and applied where appropriate, for the purpose of the interpretation of the terms and expressions used in the parts of the statute law of England and the subsidiary legislation thereunder adopted by this Act; and
- (b) further that, where any statute which was in force in England on the 30th day of June, 1968, and which was substantially similar in its subject-matter to any statute forming part of the statute law of England specified in the said Schedule 1 is, by reason of its having been repealed or having ceased to have effect after that date, not included in the statute law specified in Schedule 1, that statute shall, for the purposes of this section, be deemed to be part of the statute law of England specified in the said Schedule 1.

[s 6 am Act 22 of 1976 s 3, opn 10 Nov 1976; Act 8 of 2011 s 12 and Sch 1[51], opn 15 Apr 2011]

## **7 Repeal of certain provisions of the Laws Repeal and Adopting Ordinance 1922–1967**

[s 7 rep Act 8 of 2011 s 12 and Sch 1[52], opn 15 Apr 2011]

## **8 Amendment of Schedule 1 to the Laws Repeal and Adopting Ordinance 1922–1967**

[s 8 rep Act 8 of 2011 s 12 and Sch 1[52], opn 15 Apr 2011]

## **9 Amendment of Schedule 2 to the Laws Repeal and Adopting Ordinance 1922–1967**

[s 9 rep Act 8 of 2011 s 12 and Sch 1[52], opn 15 Apr 2011]

## **10 Amendment of Schedule 3 to the Laws Repeal and Adopting Ordinance 1922–1967**

[s 10 rep Act 8 of 2011 s 12 and Sch 1[52], opn 15 Apr 2011]

## **11 Repeal of the Merchant Shipping Ordinance 1924–1967**

[s 11 rep Act 8 of 2011 s 12 and Sch 1[52], opn 15 Apr 2011]

## **12 Modification of Application of English Statutes Relating to the Limitation of Actions**

Where immediately before the commencement of this Act the bringing of any action would not have been barred under the provisions of the *Statute of Frauds and Limitations of 1867 of the State of Queensland* in its application to the Republic, then, notwithstanding the other provisions of this Act relating to the adoption of the English statutes relating to the limitation of actions as laws of

the Republic, the bringing of any such action shall not be barred under the provisions of any of those adopted statutes until:

- (a) the date on which the bringing of such an action would have been barred under the provisions of the *Statute of Frauds and Limitations of 1867 of the State of Queensland* in its application to the Republic if the application of that statute to the Republic had continued: or
- (b) the 1st day of October, 1973, whichever is the earlier date.

[s 12 insrt Act 15 of 1972 s 8, opn 21 Feb 1972]

## SCHEDULE 1

[Section 6]

[Sch 1 am Act 22 of 1976 s 4, opn 10 Nov 1976]

PARTS OF THE STATUTE LAW OF ENGLAND WHICH SHALL NOT APPLY WITHIN THE  
REPUBLIC

All those parts of the statute law of England which are printed in the Third Edition of Halsbury's Statutes of England under the titles specified hereunder, namely:

Admiralty

Affiliation and Legitimation Proceedings

Agriculture

Aliens and Nationality

Allotments and Small Holdings

Animals

Aviation (other than the *Carriage by Air Act 1961*, the *Carriage by Air (Supplemental Provisions) Act 1962* and the *Tokyo Convention Act 1967*)

Banking

Building Contracts, Architects and Engineers

Building Societies

Burial and Cremation

Carriers

Charities (other than the *Charitable Trusts (Validation) Act 1954* and the *Recreational Charities Act 1958*)

Commonwealth and other Territories

Companies

Compulsory Purchase of Land and Compensation

Conflict of Laws

Constitutional Law

Copyholds

Coroners

County Courts

Courts

Criminal Law

Crown Proceedings (Part 1)

Customs and Excise

Distress

Easements and Profits a Prendre

Ecclesiastical Law  
Education  
Elections  
Electricity  
Explosives  
Extradition and Fugitive Offenders  
Factories and Shops (other than the *Factories Act 1937*)  
Ferries  
Fire Service  
Fisheries  
Food and Drugs  
Forestry  
Friendly Societies  
Game  
Gas  
Highways  
Housing  
Husband and Wife (Parts 1, 3 and 4)  
Industrial and Provident Societies  
Infants, Children and Young Persons  
Intoxicating Liquor  
Juries  
Land Drainage and Improvement  
Land Tax  
Landlord and Tenant  
Literary and Scientific Institutions  
Loan Societies  
Local Government  
London  
Magistrates  
Markets and Fairs  
Mayor's and City of London Court  
Medicine and Pharmacy  
Mines, Minerals and Quarries

Money (Parts 2, 3, (other than the *Prevention of Frauds (Investment) Act 1958* and the *Protection of Depositors Act 1963*) and Part 4)

National Health

National Insurance and Social Security

Northern Ireland

Notaries

Open Spaces and Recreation Grounds

Parliament

Partnership

Patents and Designs

Peerages and Dignities

Pensions and Superannuation

Persons Mentally Disordered

Police

Post Office

Practice and Procedure

Prisons

Prize

Public Authorities and Public Officers

Public Health

Purchase Tax

Railways, Canals and Pipelines

Rating

Real Property (Parts 2 and 3)

Registration Concerning the Individual

Road Traffic

Royal Forces

Savings Banks

Settlements

Sheriffs and Bailiffs

Shipping and Navigation (except Part I)

Solicitors

Stamp Duties

Statutes

Taxation (*Income and Corporation Taxes Act 1970*)

Taxation (Other Tax Enactments)

Telegraphs and Telephones

Theatres and Other Places of Entertainment

Time

Title

Town and Country Planning

Trade and Industry (other than Part 4)

Trade Marks and Trade Names

Trade Unions

Tramways

War and Emergency

War Damage

Water Supply

Waters and Watercourses

Weights and Measures

Provided that the common law which was in force in England on the 31st day of January, 1968, relating to:

- (a) liability for criminal offences;
- (b) the contractual and tortious liability of infants; and
- (c) the interpretation and effect of statutes shall, subject to the provisions of Section 5 of this Act, apply and have force and effect in the Republic.

**SCHEDULE 2**

[Sch 2 rep Act 8 of 2011 s 12 and Sch 1[53], opn 15 Apr 2011]





**SCHEDULE 3**

[Sch 3 rep Act 8 of 2011 s 12 and Sch 1[53], opn 15 Apr 2011]



## **SCHEDULE 4**

[Sch 4 rep Act 8 of 2011 s 12 and Sch 1[53], opn 15 Apr 2011]

